IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CENTRAL DIVISION

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION and JEAN BLACK, Plaintiffs, and CAROLYN PENNY LEWIS and JOYCE GITCH, Plaintiffs-Intervenors, vs. AMERICAN HOME PRODUCTS CORPORATION d/b/a FORT DODGE ANIMAL HEALTH, Defendant.	No. C 00-3079-MWB **MEMORANDUM OPINION AND ORDER REGARDING CROSS-MOTIONS TO RECONSIDER THE COURT'S SEPTEMBER 13, 2001, RULING**

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I. BACKGROUND

The matters now before the court are cross-motions to reconsider a ruling on *prior* motions to reconsider. Specifically, two parties, plaintiff-intervenor Wood and defendant AHP, challenge portions of the court's September 13, 2001, ruling, which was itself a ruling on reconsideration of the court's June 13, 2001, ruling, which denied plaintiff EEOC's motion for a continuance pursuant to Rule 56(f) and granted defendant AHP's motion for partial summary judgment on the EEOC's ability to assert claims for individual relief on behalf of plaintiff-intervenors Gitch and Wood. On September 21, 2001, plaintiff-intervenor Wood filed combined "Rule 59(e) and Rule 60 Motions to Reconsider Memorandum Opinion and Order," asserting (1) that the September 13, 2001, ruling granting partial summary judgment on the EEOC's claims seeking individual relief on his behalf was "premature," because Wood's own standing to be heard on the issue of the scope of his release had not been recognized until the September 13, 2001, order, and (2) that the September 13, 2001, order was "ambiguous and overbroad" concerning the scope of Wood's release and, hence, improperly limited the claims Wood could still litigate in this action. On October 10, 2001, AHP filed a resistance to Wood's motion to reconsider and its own cross-motion to reconsider. For its part, AHP seeks reconsideration of the portions of the September 13, 2001, ruling permitting Wood to intervene as a matter of right, pursuant to Rule 24(a) of the Federal Rules of Civil Procedure, and "permitting" Wood *to seek* permissive intervention

under Rule 24(b).

The focus of these challenges to the court's September 13, 2001, ruling is the following conclusion:

> 3. The June 28, 2001, Rule 59(e) motion by Plaintiff-Intervenor Gitch and "class member" Wood concerning orders denying Wood's intervention is **granted**, to the extent that Wood is granted leave to intervene to assert Title VII claims based on post-termination practices and supplemental state-law claims, to the extent that such claims are not precluded by findings in Wood's state-court action.

September 13, 2001, Memorandum Opinion and Order Regarding Motions to Reconsider Order Granting Partial Summary Judgment and Regarding Plaintiff-Intervenor Gitch's Motion for Partial Summary Judgment on First Affirmative Defense (September 13, 2001, ruling), 50-51 (*EEOC v. American Home Prods., Inc.*, 165 F. Supp. 2d 886, 916 (N.D. Iowa 2001)).

II. LEGAL ANALYSIS

The court will consider the motions to reconsider in the order in which they were filed, notwithstanding that AHP's motion to reconsider, if granted, may obviate the need to consider the scope of any claims Wood may assert on intervention. This is appropriate, not least because the court finds that no alteration of the September 13, 2001, ruling is required on either of the grounds Wood asserts.

A. Wood's Motion To Reconsider

1. "Prematurity"

The court finds that the September 13, 2001, ruling granting partial summary judgment on the EEOC's claims seeking individual relief on Wood's behalf was not "premature," even though Wood was only granted leave to intervene by the September 13,

2001, ruling. "To be sure, the intervener still must take the main suit as he finds it, but only in the sense that he cannot change the issues framed between the original parties, *and must join subject to the proceedings that have occurred prior to his intervention; he cannot unring the bell*." *Hartley Pen Co. v. Lindy Pen Co.*, 16 F.R.D. 141, 153 (S.D. Cal. 1954) (emphasis added); *accord Tropical Cruise Lines, S.A. v. Vesta Ins. Co.*, 805 F. Supp. 409, 414 (S.D. Miss. 1992) (quoting *Hartley Pen*) (refusing to dissolve a stay pending arbitration entered prior to the intervenor's complaint in intervention). Here, Wood seeks to "unring the bell" upon his intervention to revisit a ruling granting summary judgment on the EEOC's claims on his behalf.

However, the United States Supreme Court has suggested circumstances in which an intervening party *can* "unring the bell" by identifying precisely when a party *cannot*. The Court has concluded that it is inappropriate to permit relitigation of decided issues upon intervention of a party *who was adequately represented by an existing party* at the time the issues were originally decided. *See Arizona v. California*, 460 U.S. 605, 626-28 (1983); *see also Nevada v. United States*, 463 U.S. 110 (1983). The Tenth Circuit Court of Appeals has fashioned an exception to the general rule that an intervenor cannot force relitigation of previously decided issues by distinguishing the Supreme Court's decisions in *Arizona* and *Nevada* to hold that, even where an intervenor was represented by an existing party at the time the issue sought to be relitigated was decided, if the issue was not fully litigated, but was instead decided by a consent decree, the party was not "adequately" represented, and the challenged decision could be set aside to afford the intervenor a full and fair opportunity to litigate the issue. *Sanguine, Ltd. v. United States Dep't of Interior*, 798 F.2d 389, 391-92 (10th Cir. 1986) (distinguishing *Arizona* and *Nevada*), *cert. denied*, 479 U.S. 1054 (1987).

This case presents a third scenario. While the court cannot insist that Wood was "adequately represented" by the EEOC, in light of a statutory right of an "aggrieved party" to intervene in litigation commenced by the EEOC, *see* 42 U.S.C. § 2000e-5(f)(1) ("The

person or persons aggrieved shall have the right to intervene in a civil action brought by the Commission."); *EEOC v. Waffle House, Inc.*, 193 F.3d 805, 810 (4th Cir. 1999) ("[E]ven when the EEOC has determined to bring suit in its own name, the charging party retains 'the right to intervene in a civil action brought by the Commission' if the individual believes that the EEOC will not adequately represent his interests as it pursues its public objectives. *See* 42 U.S.C. § 2000e-5(f)(1)."), *cert. granted*, ___ U.S. ___, 121 S. Ct. 1401 (2001), it is clear that Wood had a full and fair opportunity to litigate the issue of the scope of his release. Wood's motion for leave to intervene was filed May 18, 2001, after AHP filed its motion for partial summary judgment on the EEOC's claims on Wood's behalf, which put at issue the scope of Wood's release, and after the EEOC had filed a Rule 56(f) motion to continue proceedings on AHP's summary judgment motion, *inter alia,* to conduct further discovery on the scope and enforceability of Wood's release. Wood has participated at every stage of the proceedings since the time he *moved* to intervene, as either a prospective intervenor, or as a purported "class member," through the same counsel representing plaintiff-intervenors Gitch and Lewis and plaintiff Black. Wood's counsel has argued at every opportunity, in briefs and oral arguments, the scope of his release, *but has never once asserted that the release did not bar claims arising before the date it was executed. See, e.g.*, Plaintiff-Intervenor Craig W. Wood's Rule 59(e) Motion to Alter or Amend Order (June 18, 2001, Docket #49); Gitch and Wood's Rule 59(e) Motion to Alter or Amend Orders Denying Wood's Intervention (June 28, 2001, Docket #56); Plaintiff-Intervenor Gitch and Class Member Wood's Reply to Defendant's Resistance to Rule 59(e) Motions of EEOC, Wood and Gitch (Docket #66). The court considered extensively Wood's arguments concerning the scope of his release in the September 13, 2001, ruling. *See* September 13, 2001, ruling at 25-50 (*American Home Prods., Inc.*, 165 F. Supp. 2d at 902-16). Even now, in his motion to reconsider the September 13, 2001, ruling, Wood does not attempt to identify any evidence or argument that he has been foreclosed from presenting. Rather, in

his "Rule 59(e) and Rule 60 Motions to Reconsider Memorandum Opinion and Order," ¶ 2, Wood expressly "concedes that his 1-14-99 release bars him from asserting pre-release employment claims for damages accruing before the date of the 1-14-99 release." Therefore, the court's September 13, 2001, ruling on the scope of Wood's release was not "premature."

2. "Ambiguity" and "overbreadth"

Similarly unpersuasive is Wood's argument that the court's September 13, 2001, ruling on the scope of his release was "ambiguous and overbroad." Wood argues that "it is unclear what the Court means by reference to 'post-termination practices' ([September 13, 2001, ruling], p. 48, 50) and 'any claim arising from his termination,' ([*Id.*], p. 30)," and "sweeping reference to 'post-termination conduct' ([*Id.*], p. 30)," which Wood argues "appears to foreclose Wood's post-release retaliation and negligent misrepresentation claims, arising before Wood's termination on February 28, 1999. . . ." He argues that the state court expressly interpreted his release to preserve claims accruing after January 14, 1999, the date of his release, including claims accruing between January 14, 1999, and February 28, 1999, the effective date of his termination.

The court can only conclude that Wood has overlooked the court's clear distinction between the date of his termination, which the court found to be January 6, 1999, the date on which he was notified that he would be terminated, and February 28, 1999, the date that his termination became "effective,"—thus making clear that the release pertained to Wood's "termination," even if the release was executed after the termination decision had been made, and before the termination became "effective." *See* September 13, 2001, ruling at 26-30 (*see American Home Prods., Inc.*, 165 F. Supp. 2d at 902-05). Wood also apparently overlooks the court's further conclusion that the release did not release any claims that accrued after the date it was executed, January 14, 1999. *See id.* at 30 (concluding that, under contract principles, a release does not bar claims that accrue after

the date the release was signed) (*see American Home Prods., Inc.*, 165 F. Supp. 2d at 905). Finally, Wood apparently overlooks the court's careful review of his pleadings to determine what, if any, "post-release" claims Wood may have attempted to plead. *See* September 13, 2001, ruling at 48-49 (*see American Home Prods., Inc.*, 165 F. Supp. 2d at 914-15). Thus, the court has plainly identified the claims on which Wood may *attempt to* proceed in this action, notwithstanding his release, including his claim of retaliatory misrepresentations between January 14, 1999, and January 21, 1999, which he appears most anxious to preserve in his motion to reconsider, even though the court noted in its September 13, ruling, that "the timing of the conduct at issue in [allegations in ¶¶ 16 and 20 of his complaint in intervention] is rather vague." September 13, ruling at 48 (*American Home Prods., Inc.*, 165 F. Supp. 2d at 915.[1] Thus, there is no ambiguity or overbreadth in the September 13, 2001, ruling, as asserted by Wood.

Wood's September 21, 2001, motion to reconsider will be denied in its entirety, whatever the outcome of AHP's renewed challenge to his intervention.

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[1] In the course of its analysis in the September 13, 2001, ruling, of the scope of any unreleased claims that Wood had attempted to plead, the court clearly stated that it "takes no position at this time on whether these claims are futile, preempted, res judicata, or otherwise so deficient as to make intervention inappropriate." September 13, 2001, ruling at 49 (*American Home Prods., Inc.*, 165 F. Supp. 2d at 915). Moreover, in the pertinent conclusion, the court reiterated that "Wood is granted leave to intervene to assert Title VII claims based on post-termination practices and supplemental state-law claims, *to the extent that such claims are not precluded by findings in Wood's state-court action*." *Id.* at 51 (*American Home Prods., Inc.*, 165 F. Supp. 2d at 916). Thus, the parties' extensive arguments about whether or not certain of Wood's claims are indeed precluded by res judicata or otherwise barred are not the proper subject of this ruling on motions to reconsider the September 13, 2001, ruling, where the court reserved those questions for later determination. The court clearly contemplated that arguments concerning such issues might be addressed in subsequent proceedings, for example, on a motion for summary judgment as to some or all of the claims on which Wood was permitted to intervene.

B. AHP's Motion To Reconsider

1. "Permitting Wood to seek permissive intervention"

Turning to AHP's October 10, 2001, motion to reconsider, one portion of AHP's motion addresses a determination that the court never made in its September 13, 2001, ruling. In its September 13, 2001, ruling, the court, on reconsideration, permitted Wood to intervene as of right, but nowhere in that ruling did the court "permit Wood to seek permissive intervention." As the court noted in its ruling, "Wood originally sought to intervene only pursuant to Rule 24(a)(1), which permits intervention 'when a statute of the United States confers an unconditional right to intervene,' identifying the pertinent statute as Title VII," and the court permitted intervention on that basis, as limited in the order. *See* September 13, 2001, ruling at 49 (*American Home Prods., Inc.*, 165 F. Supp. 2d at 915). As to permissive intervention, the court noted only the following:

> At the oral arguments, Wood's counsel sought leave to make an oral amendment to seek permissive intervention on the grounds of diversity and presence of common questions of law and fact between the present action and Wood's claims. The oral amendment is denied without prejudice to reassertion in written form.

Id. at 49 n.8 (*American Home Prods., Inc.*, 165 F. Supp. 2d at 915 n.8). Nothing about denying an oral motion for permissive intervention without prejudice to reassertion in written form amounts to "permitting Wood to seek permissive intervention," at least in the sense of giving him leave to do what he might otherwise not be able to do. The court's ruling was simply the denial of an oral motion, taking no position whatsoever on the merits or timeliness of permissive intervention, and leaving entirely to the moving party the determination of whether or not to file a written motion. In other words, the court left the parties in precisely the same position regarding permissive intervention as they were in before the issue was ever raised by oral motion. Because the merits of permissive intervention by Wood were not presented at the time of the September 13, 2001, ruling, that

issue need not be "reconsidered," or even "considered," at this time, in response to the parties' cross-motions for reconsideration, even if AHP is convinced—as AHP appears to be from its extensive argument on the issue—that a motion for permissive intervention is patently without merit. To the extent that AHP asserts that the court should have expressly foreclosed Wood from seeking permissive intervention in its September 13, 2001, ruling, AHP's motion to reconsider will be denied. Because the merits of permissive intervention had not been fully presented, it would indeed have been "premature" for the court to foreclose Wood from presenting such a request.

On September 21, 2001, Wood filed a written motion for leave to amend his petition to intervene to seek both permissive intervention and intervention as of right, and that matter is now pending before a magistrate judge of this court. AHP's challenges to the merits of Wood's permissive intervention are therefore properly directed at Wood's September 21, 2001, motion to amend his petition to intervene, not the court's September 13, 2001, ruling, and the court need not and will not consider permissive intervention further in this ruling.

2. Permitting Wood to intervene as of right

There may be more merit to AHP's contention that the court must reconsider and overturn its ruling that Wood should be granted leave to intervene as of right, even as limited in the September 13, 2001, ruling. In its September 13, 2001, ruling, the court concluded that the magistrate judge had prematurely denied Wood's motion to intervene as of right, because the magistrate judge had apparently assumed that Wood's claims in intervention had to be *the same* claims as those asserted by an existing party, in this case, the EEOC. *See* September 13, 2001, ruling at 49-50 (*American Home Prods., Inc.*, 165 F. Supp. 2d at 915-16). The court found that Wood had premised his right to intervention on Title VII, and he was therefore entitled to intervene in the EEOC's Title VII action to the extent that he could assert Title VII claims based on post-termination conduct not precluded by his release and supplemental state-law claims, even though the EEOC would not be

permitted to pursue claims involving Wood's termination or post-termination retaliation toward Wood. *Id.* at 49 (*American Home Prods., Inc.*, 165 F. Supp. 2d at 915). AHP does not take issue with the conclusion that the intervenor's claims do not have to be *the same* as the EEOC's, but does argue that Wood does not satisfy the statutory requirements to intervene as of right.

a. Arguments of the parties

More specifically, AHP contends that, with the granting of its motion for summary judgment on the EEOC's claims on Wood's behalf, there is no claim in this action on which Wood can claim a right to intervene. AHP contends that, in the September 13, 2001, ruling, the court concluded that the EEOC *could not bring* an action to remedy post-release retaliation as to Wood, because it had never satisfied the prerequisites to pursue such a claim, and any claim the EEOC attempted to bring regarding *pre-release* retaliation was barred by Wood's release.

In his resistance to AHP's cross-motion to reconsider, which he filed October 19, 2001, Wood argues, first, that AHP's cross-motion is untimely under Rule 59(e), and, second, that the judgment in his state-court action precludes AHP from arguing that he cannot pursue his post-release Title VII claims in federal court. Neither argument, however, is responsive to the question of whether Wood has a right to intervene in the EEOC's action in this case pursuant to Rule 24(a)(1) and 42 U.S.C. § 2000e-5(f)(1). More responsive is the EEOC's resistance, filed October 25, 2001. In its resistance, the EEOC argues that Wood retains a right to intervene, because the EEOC retains the power to seek injunctive relief, in the public interest, from retaliatory practices by AHP, even if the EEOC cannot now pursue individual relief on Wood's behalf. Indeed, the EEOC argues, once it had filed suit, Wood's only means of vindicating his rights was by intervening in this action.

In reply, AHP argues that Wood's interests cannot be implicated by the relief the

EEOC can still obtain, because he is no longer an employee of AHP and his own pre-release claims are barred. More specifically, AHP argues that it would be "bizarre" to allow Wood to invoke his pre-release claims, which he cannot pursue on his own behalf, in order to inject into the EEOC's lawsuit claims that the EEOC cannot pursue at all. Furthermore, AHP contends that the concerns Congress addressed by providing for intervention as of right in actions by the EEOC are not raised in this case, because there is no relief in the public interest that the EEOC could obtain that would leave Wood "aggrieved" as to his individual circumstances, where the EEOC cannot obtain *any* relief on the only claims Wood can still pursue.

b. Untimeliness of the motion

Wood's untimeliness argument is untenable. The ten-day time limit on which Wood relies would only apply if AHP's motion to reconsider the order allowing Wood's intervention were a Rule 59(e) motion. *Compare* FED. R. CIV. P. 59(e) ("Any motion to alter or amend a judgment shall be filed no later than 10 days after entry of the judgment."), *with* FED. R. CIV. P. 60(b) (a motion to relieve a party from "a final judgment, order, or proceeding . . . shall be brought within a reasonable time," and for certain enumerated reasons, "not more than one year after the judgment, order, or proceeding was entered or taken"). The court's September 13, 2001, ruling was not a "judgment," at least not as to Wood's intervention, and thus is not subject to Rule 59(e) or its ten-day time limit. Rather, the court finds that the part of the September 13, 2001, ruling granting Wood leave to intervene was an "order" subject to reconsideration pursuant to Rule 60(b), and that AHP's October 10, 2001, motion to reconsider that part of the September 13, 2001, ruling was filed within a "reasonable time." *See* FED. R. CIV. P. 60(b). As mentioned above, the remainder of Wood's resistance is not responsive to the question of whether or not the court should allow him to intervene in the EEOC's action as of right.

c. Intervention only by "aggrieved persons"

As to the substantive merit of AHP's motion to reconsider allowing Wood to intervene, there is considerable logic to AHP's arguments that Wood *cannot* intervene as of right. Moreover, the EEOC's arguments that it can seek injunctive relief even when the charging individual is barred from obtaining relief by res judicata, an arbitration agreement, or a release,[2] does not answer the question of whether that charging party could somehow

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[2]Indeed, the decision on which the EEOC relies as establishing its authority to bring suit even where a party has released his or her individual claims, *EEOC v. Astra USA, Inc.*, 94 F.3d 738, 744 n.5 (1st Cir. 1996), does not stand for so broad a proposition. The cited portion of the ruling instead addressed the defendant's assertion that "unsupervised settlement agreements that waive employees' claims are more suspect under the ADEA than under Title VII":

> This assertion is based on a fundamental misunderstanding. The right to assist the EEOC is not a damages-driven right. Indeed, the court below specifically held that settling employees had waived the right to recover damages in either their own lawsuits or in lawsuits brought by the EEOC on their behalf. *See [EEOC v.] Astra,* 929 F. Supp. [512,] 521 [(D. Mass. 1996)]. In contrast to the individual right to recover damages, however, an employee's right to communicate with the EEOC must be protected not to safeguard the settling employee's entitlement to recompense but instead to safeguard the public interest. Hence, it is not a right that an employer can purchase from an employee, nor is it a right that an employee can sell to her employer. Thus, a waiver of the right to assist the EEOC offends public policy under both the ADEA and Title VII.

Astra USA, Inc., 94 F.3d at 744 n.5. Plainly, then, the issue in *Astra* was not whether or not the EEOC could bring claims for injunctive relief on behalf of employees who had released their claims, but whether, as part of a release, an employer could forbid an employee from communicating with the EEOC. *Id.* The court held that the employer could not, although "not to safeguard the settling employee's entitlement to recompense but instead to safeguard the public interest." *Id.*; *see also id.* at 745 (holding that the trial court (continued…)

intervene in the EEOC's action to assert claims that the EEOC cannot now assert, which—at least at first blush—is the question presented here. On that question, there appears to be no direct authority.

On the related question of when the EEOC may be allowed *permissive* intervention in an individual's suit, "upon certification that the case is of general public importance," 42 U.S.C. § 2000e-5(f)(1), the Seventh Circuit Court of Appeals joined the Eighth and Tenth to hold that the intervention statute "avoids there being separate actions by the person aggrieved and the EEOC *based on the same single alleged violation*." *EEOC v. Harris Chernin, Inc.*, 10 F.3d 1286, 1292-93 (7th Cir. 1993) (citing *EEOC v. Continental Oil Co.*, 548 F.2d 884 (10th Cir. 1977), and *EEOC v. Missouri Pac. R.R.*, 493 F.2d 71, 74 (8th Cir. 1974)). Here, even though the question is whether the "aggrieved person" can intervene as of right in the EEOC's action, not the other way around, it would seem that intervention should nevertheless depend upon the same showing that the EEOC's action and the claim of the "aggrieved person" are "based on the same single alleged violation." *Cf. id.* AHP appears to argue that such is not the case here, because—as the court concluded in its September 13, 2001, ruling—the EEOC *cannot* assert a claim based on post-release retaliatory conduct toward Wood, such that Wood is seeking to intervene to assert a claim that *does not* involve the "same single alleged violation" that the EEOC can assert in this action, but an altogether different violation.

On the other hand, it appears to the court that whether or not intervention as of right must be allowed should be determined on the basis of the claims asserted by the EEOC at the time the intervenor sought to intervene. Were it otherwise, an intervening party could presumably be expelled from the litigation if the EEOC's claim, to which intervention was

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[2](…continued)
properly enjoined utilization of settlement provisions that prohibit employees from assisting the EEOC in investigating charges of discrimination).

tied, were subsequently dismissed or determined in the defendant's favor. The court is not aware of any authority that an intervenor's right to continue in an action can "expire" in this fashion. Rather, "an intervenor's right to continue a suit in the absence of the party on whose side intervention was permitted is contingent upon a showing by the intervenor that he fulfills the requirements of Art. III [of the United States Constitution]." *Diamond v. Charles*, 476 U.S. 54, 68 (1986). Indeed, the decision on which AHP in part relies, *EEOC v. American Tel. & Tel. Co.*, 506 F.2d 735 (3d Cir. 1974) (*AT&T*), a decision actually considering intervention as of right by an "aggrieved person" in an action by the EEOC, appears to support this court's conclusion concerning when, and against what, the right to intervene is measured. In *AT&T*, the Third Circuit Court of Appeals approved the district court's interpretation of "aggrieved person" within the meaning of 42 U.S.C. § 2000e-5(f)(1) to mean that "the aggrievement which a prospective intervenor must show in order to secure the right to intervene under [the statute] must relate back to the grievances with respect to unlawful employment practices which have been alleged in charges previously filed with the Commission *and to remedy which the suit has been brought by the Commission*." *AT&T*, 506 F.2d at 740 (emphasis added). Thus, at least part of the analysis is whether the intervenor's claim "relates back" to unlawful employment practices that the EEOC has brought suit *to remedy*, not as to which the EEOC's claims *continue to be viable*. *Id.*

The court therefore turns to the question of whether the EEOC brought suit, at least in part, to remedy post-release retaliation. This court found in its September 13, 2001, ruling, that the EEOC had "simply never asserted a claim on Wood's behalf based on post-release conduct by AHP." *See* September 13, 2001, ruling at 31 (*American Home Prods., Inc.*, 165 F. Supp. 2d at 905). Although the EEOC argued that it *had* brought "retaliation" claims sufficiently broad to encompass the claims of post-release retaliation that Wood seeks to assert on intervention, the court rejected that contention, because the EEOC had

failed to satisfy the prerequisite of a "reasonable cause" determination as to any such claims. *See id.* at 32-48 (*American Home Prods., Inc.*, 165 F. Supp. 2d at 905-14). The EEOC has not sought reconsideration of that conclusion. Thus, neither Wood nor the EEOC can assert that the EEOC's suit was ever brought to remedy the unlawful employment practice of post-release retaliation. *See AT&T*, 506 F.2d at 740. It follows that Wood is not an "aggrieved person" entitled to intervene as of right in this action by the EEOC, because he is not asserting a claim based on "the same alleged violation" as the EEOC has brought suit to remedy, and the court's conclusion in its September 13, 2001, ruling that Wood is entitled to intervene as of right must be set aside.

Wood may still be able to obtain permissive intervention in this action, a question that, once again, is not before this court at this time, or he may be able to pursue a separate action to assert post-release retaliation claims pursuant to Title VII that is not precluded by the EEOC's present action to remedy *different* unlawful employment practices. The court takes no position on either question at this time.

III. CONCLUSION

Neither of Wood's grounds for reconsideration of the court's September 13, 2001, ruling, itself a ruling on motions to reconsider, requires alteration or amendment of the September 13, 2001, ruling. The court's ruling granting summary judgment in favor of AHP on the EEOC's claims for individual relief on Wood's behalf was not "premature," where Wood had, and took advantage of, a full and fair opportunity to litigate the question of the scope of his release. Nor was the ruling "ambiguous and overbroad," in its reference to the continued viability of "post-release retaliation claims," because the court's order clearly established the temporal relationship between the termination and release, and plainly identified the claims on which Wood was allowed to proceed. Wood's September 21, 2001, motion for reconsideration is **denied in its entirety**.

On the other hand, AHP's October 10, 2001, motion for reconsideration of the September 13, 2001, ruling is **granted in part and denied in part.** AHP's contention that the court should not have permitted Wood to *seek* permissive intervention is without merit, where the court merely left the parties where they had been on the question of permissive intervention by denying an oral motion for permissive intervention without prejudice in its reassertion in written form. However, upon reconsideration, the court finds that Wood is not an "aggrieved person" entitled to intervene in this action as of right pursuant to 42 U.S.C. § 2000e-5(f)(1) and Rule 24(a)(1), where the EEOC did not bring this suit to remedy the unlawful employment practice of post-release retaliation that Wood seeks to assert on intervention. Thus, that part of the September 13, 2001, ruling granting Wood leave to intervene as of right is **set aside**.

IT IS SO ORDERED.

DATED this 20th day of December, 2001.

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MARK W. BENNETT
CHIEF JUDGE, U. S. DISTRICT COURT
NORTHERN DISTRICT OF IOWA